



Commonwealth of Massachusetts State Ethics Commission

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James Ansart
18 Dutcher Street
Hopedale, MA 01747

PUBLIC ENFORCEMENT LETTER 98-2

Dear Mr. Ansart:

As you know, the State Ethics Commission ("the Commission") has conducted a preliminary inquiry into allegations that you violated the state conflict of interest law, General Laws c. 268A, by, while serving as the Hopedale Water and Sewer Commission ("WSC") chairman, having your engineering firm (d/b/a J.M. Ansart, Inc. (hereafter referred to as "JMA")), work as an unlisted subcontractor on the Hopedale Memorial Elementary School Renovation Contract. Based on the staff's inquiry (discussed below), the Commission voted on May 13, 1998 that there is reasonable cause to believe that you violated the state conflict of interest law, G.L. c. 268A, §20.

For the reasons discussed below, the Commission does not believe that further proceedings are warranted. Instead, the Commission has determined that the public interest would be better served by bringing to your attention, and to the public's attention, the facts revealed by the preliminary inquiry and by explaining the application of the law to the facts, with the expectation that this advice will ensure your understanding of and future compliance with the conflict of interest law. By agreeing to this public letter as a final resolution of this matter, you do not admit to the facts and law discussed below. The Commission and you have agreed that there will be no formal action against you in this matter and that you have chosen not to exercise your right to a hearing before the Commission.

I. Facts

1. You were on the WSC from May 1990 until you resigned in August 1997. You served as the chairman during the period of 1994 through August 1997. The WSC members are elected and compensated.^{1/}
2. The WSC appoints the Water and Sewer Department ("WSD") superintendent and foreman as well as other WSD positions.
3. JMA does water and sewer construction work. The company was organized on November 6, 1987, under c. 156B. You were listed as the corporation president, treasurer, and sole director; your wife, Jennifer A. Ansart, was designated as the clerk.^{2/}
4. On September 14, 1994, the Town of Hopedale School Building Committee entered into a \$6,624,515 contract with Congress Construction Company to serve as the general contractor for the renovation of the Memorial Elementary School.^{3/}
5. On October 11, 1994, Congress Construction entered into a \$510,000 subcontract with JMA to provide various services relating to the school renovation contract, including general site

work, excavations, foundation construction, and installing the water and sewer lines to the new building. Approximately \$103,000 of this subcontract involved water, sewer, and drain work. Thereafter, JMA performed and was paid for these services.^{4/ 5/}

6. The contract between Congress Construction and JMA incorporates by reference the general contract between Congress Construction and the Hopedale School Building Committee. JMA's contract with Congress Construction also states that Congress Construction will pay JMA "if, and only if" Congress Construction receives payment from the Hopedale School Building Committee.

7. Congress Construction informed us that they selected JMA for the water and sewer subcontract work because your company was the low bidder for the job. You had previously done a job for Congress Construction and the general contractor was satisfied with JMA's work. The facts that JMA was known to the general contractor and was local were further inducements to give the contract to JMA. Congress Construction asserts that it was not aware that you were a member of the Hopedale WSC when they awarded JMA the contract, but learned of your WSC position during the course of the work.

8. As the Hopedale Memorial School Renovation was a town project, all permits were waived. No permits were required to be pulled from the WSD.

9. JMA's work was inspected by the WSD superintendent and the WSD foreman. The WSD employees knew that JMA was your company. The WSD inspectors were aware that you were one of three members of their appointing authority. The WSD inspectors did not deal with you directly but with the JMA foreman. The WSD superintendent indicated that he never thought about his relationship with you when he was doing the inspection. He felt an obligation to the town to ensure that all of the work was done according to specifications. The WSD superintendent stated that you did not discuss the work or the inspection with him nor did you put any pressure on him to ensure the sewer lines passed inspection.

10. You told us that you did not participate as a WSC Commissioner in the Hopedale Memorial School renovation project in any way. The school building committee dropped off a set of plans for the project which you looked at, but you deny making any comments or suggestions to the school building committee. The review of the plans was handled by the WSC superintendent.

11. There is no evidence that JMA did not perform the subcontract water and sewer work satisfactorily.

II. Discussion

As the WSC chairman, you were a municipal employee subject to the conflict of interest law, G.L. c. 268A. You were subject to c. 268A generally and, in particular, to §20. (A copy of §20 is attached for your information.) Section 20 prohibits a municipal employee from having a direct or indirect financial interest in a contract made by an agency of the same municipality, of which financial interest he has knowledge or reason to know, unless an exemption is available. *See In re McMann*, 1988 SEC 379 (school committee member violates §20 by having a financial interest in contract with school district). "This provision is intended to prevent municipal employees from using their position to obtain contractual benefits from their own municipality, and to avoid the public perception that they have an "inside track" on such opportunities."

Commission Advisory No. 7. Board of Selectmen of Avon v. Linder, 352 Mass. 581, 583 (1967) (“[Enactment of the conflict of interest law] was as much to prevent giving the appearance of conflict as to suppress all tendency to wrongdoing.”) See also *Quinn v. State Ethics Commission*, 401 Mass. 210 (analyzing §7, the state counterpart to §20).

The contract between Congress Construction and the Town of Hopedale was a contract made by an agency of Hopedale. The subcontract between JMA and Congress Construction resulted in your having an indirect financial interest in Congress Construction’s general contract with the town. The Commission has held that a municipal employee’s interest in such subcontracts is prohibited by §20.^{6/} *EC-COI-90-17*. You obviously had knowledge of this financial interest. Therefore, by having such an interest in this municipal contract, there is reasonable cause to believe you violated §20.

The facts in your case are also troubling because you serve as the WSC chairman and the subcontract work you were hired to perform involved water and sewer work subject to the WSC’s jurisdiction, and which would be inspected by your own subordinates at the WSC. Although we have no facts proving you used your municipal position to obtain this contract—Congress Construction asserts it did not even know you were the WSC chair—these facts certainly could create the public perception that you have somehow used your municipal position as an “inside track” to obtain this substantial contract. Consequently, we view this conduct as sufficiently serious to warrant a public resolution.

There are exemptions to §20 available to public employees under certain circumstances. In your case, you were eligible to obtain a §20(b) exemption. The statute states that §20 does not apply:

b) to a municipal employee who is not employed by the contracting agency or an agency which regulates the activities of the contracting agency and who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made after public notice or where applicable, through competitive bidding, and if the municipal employee files with the clerk of the city or town a statement making full disclosure of his interest...

In your case, you were not employed by the contracting agency (the Hopedale School Building Committee) nor does it appear that the WSC regulates the activities of that agency (and you do not appear to have official responsibility for any of the activities of the Hopedale School Building Committee). The general contract was awarded after a competitive bid process. Therefore, had you timely filed with the town clerk a statement making full disclosure of your interest, you apparently could have received the subcontract. You did not file such a disclosure, however.

The importance of strictly complying with the disclosure provision of §20 should be emphasized; the requirement is not a mere technicality. As discussed above, your subcontract involved a potential use of your municipal position to gain an “inside track” to this business opportunity. Requiring that you file public notice of this contract would be a substantial deterrent to your succumbing to any temptation to take advantage of that potential “inside track.” At the same time, such a filing gives town officials and the public an opportunity to scrutinize such contracts to ensure that such abuses have not, in fact, occurred. (Moreover, had you properly filed a statement with the town clerk fully disclosing your financial interest in the contract, it might well have been that the town may have made alternative plans for the inspection of your

work (i.e., having water department employees from another community rather than your own subordinates conduct the inspection.))

Nor do we conclude that you are entitled to the protection provided by §20(a). That section states that §20 does not apply to a municipal employee “who in good faith and within 30 days after he learns of an actual or prospective violation of this section makes full disclosure of his financial interest to the contracting agency and terminates or disposes of the interest...” The thirty-day time period is triggered at the time that a municipal employee learns of his financial interest in a contract, not when he learns that such an interest violates the law. *In re McLean*, 1981 SEC 75. If the 30 day period only began running when the municipal employee knew his interest violated the statute, enforcement of §20 would be virtually impossible because an employee could terminate his interest upon learning of a Commission investigation, no matter how long he had actually been in violation of the law. This interpretation would effectively nullify §20. *McLean, id.*^{7/} Thus, you are not entitled to the §20(a) “grace period” as you were obviously aware of your prospective financial interest in the general contract when you entered into the subcontract, and more than 30 days have passed since that time.

III. Disposition

The Commission is authorized to resolve violations of G.L. c. 268A with civil penalties of up to \$2,000 for each violation. The Commission chose to resolve this case with a public enforcement letter, rather than imposing a fine because (1) this is the first time the Commission has brought an enforcement action regarding a prohibited financial interest in a subcontract, an area where the Commission believes additional education is necessary; and (2) you could have obtained a §20(b) exemption (and did satisfy all but the disclosure requirements). The combination of these factors, in the Commission’s view, makes a public enforcement letter appropriate.

Based upon its review of this matter, the Commission has determined that your receipt of this public enforcement letter should be sufficient to ensure your understanding of and future compliance with the conflict of interest law.

This matter is now closed.

DATE: June 3, 1998

^{1/}WSC Commissioners are not designated as special municipal employees.

^{2/}JMA has since filed for bankruptcy.

^{3/}The contract lists 14 subcontractors that Congress Construction would use on the project. JMA is not listed as a subcontractor on the main contract.

^{4/}The architectural firm Alderman & MacNeish did the design work for the water and sewer system.

5/There was no requirement for the School Building Committee or the Clerk of the Works to approve sub-contractors, however, the Clerk of the Works had to be notified whenever a new sub-contractor started work on the site.

6/As indicated above in the fact section, the JMA/Congress Construction subcontract incorporates by reference the general contract between Congress Construction and the Hopedale School Building Committee, and expressly provides that JMA will be paid "if, and only if" Congress Construction receives payment from the municipality.

7/To the extent that *EC-COI-89-22* appears to say anything to the contrary, the Commission reaffirms *McLean*.